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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,795	11/08/2001	Daniel A. King	DIGI:0001	1407
26122 7590 08/22/2008 LAW OFFICES OF GARY R. STANFORD 330 W OVERLOOK MOUNTAIN RD BUDA, TX 78610				
EXAMINER PORTER, RACHEL L				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/005,795

**Applicant(s)**

KING ET AL.

**Examiner**

RACHEL L. PORTER

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4/29/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 19,20,22-26 and 36-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18,27-29,30-35, and 44-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the election filed 4/29/08. Claims 1-45 are pending. Claims 19-21, 22-26, 36-38, and 39-43 are withdrawn from further consideration as per the election filed 5/9/07. Claims 1-18, 27-29, 30-35 and 44-45 are presented for examination.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a §101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876). If neither of these requirements is met by the claim, the method is not a patent eligible

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process under §101 and should be rejected as being directed to nonstatutory subject matter.

With respect to claim 1, the claim language does not include the required tie or transformation that would provide the application of the test to the claim to reach the conclusion of nonstatutory subject matter.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-18, 27-29, 30-35 and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freedman et al (US 2002/0002475) in view of Mackey et al (US 6,141,611).

[claim 1] Freedman teaches a method of facilitating the claims and repair process for an insured person, comprising: collecting accident information involving a vehicle that gets damaged (Figure 1); communicating the accident information to a remote site; (figure 1--120) and posting the accident information on behalf of the insured person for purposes of selecting repair and supplier parties. (figure 1—120, 122; par 129-133)

Freedman, however, does not expressly disclose capturing information at the “at birth of an accident.” Mackey discloses a method for electronically collecting data at the

accident scene, transmitting and storing the details of an accident (col. 2, lines 15-29). At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the system and method of Freedman with the teaching of Mackey to include equipment to capture data at the scene of the accident. As suggested by Mackey, one would have been motivated to include this feature to ensure that the accident data is readily available for evaluation by authorized parties, such as insurance adjusters, risk management and loss control entities. (col. 1, lines 15-17)

[claim 2] Freedman discloses the method of claim 1, further comprising: providing electronic data collection equipment; and said collecting accident information comprising using the electronic data collection equipment to retrieve and record accident information. (par. 131-132; 141)

[claim 3] Freedman discloses the method of claim 2, the electronic data collection equipment comprising mobile electronic data collection equipment, wherein said collecting accident information comprises retrieving and recording accident information at the birth of the accident. (Figure 1; 120-122; 134-135 video)

[claim 4] Freedman discloses the method of claim 3, further comprising: communicating claim information from the remote site to the insured person via the mobile electronic data collection equipment. (par. 140)

[claim 5] Freedman discloses the method of claim 4, wherein the claim information includes a claim number. (par. 117, 163-165)

[claim 6] Freedman discloses the method of claim 4, further comprising: making a preliminary damage estimation; and providing a preliminary claims estimate to the insured person via the mobile electronic data collection equipment. (Figure 1-estimate step)

[claim 7] Freedman discloses the method of claim 3, wherein said providing electronic data collection equipment comprises distributing mobile electronic data collection equipment to insured persons. (Figure 1; 120-122; 134-135 video)

[claim 8] Freedman discloses The method of claim 3, wherein said providing electronic data collection equipment comprises distributing mobile electronic data collection equipment to tow truck drivers or other third parties. (par. 132-135)

[Claim 9] Freedman teaches the method of claim 3, the mobile electronic data collection equipment incorporating a digital camera, wherein said collecting accident information comprises taking digital images. (par. 132-135)

[claim 10] Freedman teaches the method of claim 9, the mobile electronic data collection equipment further incorporating wireless communications, wherein said electronically communicating the accident information comprises wirelessly communicating digital images. (par. 132-135; 196)

[claims 11-12] Freedman discloses the method of claim 9, wherein said taking digital images includes taking digital images of damaged vehicles and images associated with the scene of the accident including concomitant environmental conditions or images of injured persons. (Figure 1; par. 129; 132-135)

[claims 13] Freedman discloses The method of claim 3, the mobile electronic data collection equipment incorporating a bar code scanner, wherein said collecting accident information comprises scanning a bar coded vehicle identification number of a damaged vehicle. (par. 119, 125-126)

[claim 14] Freedman teaches The method of claim 3, the mobile electronic data collection equipment incorporating wireless communications, wherein said electronically communicating the accident information comprises wirelessly transmitting the accident information. (par. 119)

[claim 15] Freedman discloses the method of claim 3, the mobile electronic data collection equipment configured to store the accident information and for interfacing a PC dispatch system coupled to a communication network, further comprising (Figure 3): providing a PC dispatch system at a facility; retrieving the insured person's damaged vehicle and the mobile electronic data collection equipment at the accident site and delivering to the facility; coupling the mobile electronic data collection equipment to the PC dispatch system; and the PC dispatch system retrieving the accident information from the mobile electronic data collection equipment and electronically communicating the accident information via the communication network. (Figure 1; par. 127-135)

[claims 16-17] Freedman discloses the method of claim 2, the electronic data collection equipment comprising a mapping system with electronic communication capability, wherein said collecting accident information comprises mapping the damaged vehicle. (Figure 1 (120-127); par.125; 129)

[claim 18] Freedman discloses the method of claim 16, the electronic communication capability comprising wireless communications, wherein said electronically communicating the accident information comprises wirelessly transmitting mapped information via the communication network. (Figures 1,3; par. 125, 196)

[claims 27-28] Freedman discloses a method further comprising: dispatching a tow truck to retrieve and deliver a replacement vehicle to the accident site; and retrieving, by the dispatched tow truck, the damaged vehicle or replacement vehicle (par. 132-136, 141)

[claim 29] Freedman discloses the method of claim 1, further comprising: providing a computer with estimation software at the remote site to assist and facilitate assessment of the accident information to identify a claims estimate by a claims adjuster. (Fig. 1; par. 129-130)

[claim 30] Freedman teaches the method of claim 1, further comprising: providing a master database incorporating aggregate damage and accident information of other accidents; (par. 125) and providing a claims wizard at the remote site that operates as an expert system which uses new accident information and the aggregate damage and accident information to assist in damage assessment. (par. 130-131)

[Claims 31-32] Freedman discloses the method of claim 30, further comprising employing, by the claims wizard, similar-type vehicle information or accident information from the master database. (Figure 3; par. 183-195; par. 226)



[claim 33] Freedman teaches the method of claim 30, further comprising: providing wireless mobile electronic data collection equipment for availability at accident sites, wherein said collecting accident information comprises using the mobile electronic data collection equipment to retrieve accident information and to transmit the accident information to the remote site;(125, 129-130) and the claims wizard interactively cooperating with the wireless mobile electronic data collection equipment regarding particular data collection parameters. (Figure 3; par. 183-195; par. 226)

[claim 34] Freedman discloses the method of claim 33, further comprising: the claims wizard transmitting instructions to the wireless mobile electronic data collection equipment to facilitate collecting any additional information regarding the accident to facilitate damage assessment. (par. 141-144, 146)

[claim 35] Freedman discloses the method of claim 33, further comprising: the wireless mobile electronic data collection equipment including a digital camera for wirelessly communicating digital images to the remote site; (125, 132-135; 196) and the claims wizard transmitting instructions to the wireless mobile electronic data collection equipment for taking digital images of certain parts of the damaged vehicle. (par. 141-144, 146)

[claim 44] Freedman discloses The method of claim 1, further posting claim activity and repair process for enabling the insured person to monitor progress. (par. 141)

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claim 45 is rejected under 35 U.S.C. 102(e) as being anticipated by Freedman.

[claim 45] Freedman discloses a claims process method, comprising: employing a mapping system to map a vehicle to generate external damage information; and using the damage information in an attempt to assess complete vehicle damages for claim purposes.(par. 125, 129-130—Examiner interprets video tapes of damage to assess the cost of damage to be the mapping of damage.)

***Response to Arguments***

7. Applicant's arguments with respect to claims 1-18, 27-29, 30-35 and 44-45 have been considered but are moot in view of the new ground(s) of rejection. Applicant argues that the Freedman reference does not disclose "at the birth of an accident." A new reference has been provided to address this limitation.

***Conclusion***

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8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Obradovich (US US 2006/0277495 A1); Ferguson (US 6185490 B1); Chan (US 2003/0133016 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL L. PORTER whose telephone number is (571)272-6775. The examiner can normally be reached on M-F, 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, (Christopher) Luke Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/C Luke Gilligan/

Supervisory Patent Examiner, Art Unit 3626